

**Supplemental Letter of Findings Number: 02-20140358
Corporate Income Tax
For Tax Year 2009, 2010, and 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Corporation incurring wage expenses for research work that was performed by employees conducting their research from its Indiana research facility is allowed an Indiana research tax credit even if the research projects were based at a location outside of Indiana.

ISSUE

I. Adjusted Gross Income Tax-Research Expense Tax Credit.

Authority: IC § 6-3.1-4-1 et seq.; IC § 6-3.1-4-2; IC § 6-8.1-5-1; I.R.C. § 41; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the disallowance of a portion of its claimed research expense tax credit.

STATEMENT OF FACTS

Taxpayer, a corporation, is a grain processor, providing ingredients to the food, beverage, brewing, and pharmaceutical industries worldwide. The Indiana Department of Revenue ("Department") audited Taxpayer's Indiana returns and business records for calendar years 2009, 2010, and 2011. The Department made adjustments to Taxpayer's returns which increased Taxpayer's Indiana income for the 2009 and 2011 tax years and reduced Taxpayer's net operating loss incurred in the 2010 tax year. The Department applied Taxpayer's available net operating loss deductions to the additional income in the 2009 and 2011, reduced Taxpayer's net operating loss incurred in the 2010 tax years, and adjusted Taxpayer's claimed research expense tax credit for 2010 and 2011 tax years. The Department's adjustments resulted in the Department issuing a proposed assessment of additional adjusted gross income tax and interest for tax year 2011.

Taxpayer protested the proposed assessment of additional adjusted gross income tax. An administrative hearing was held. The Department issued a Letter of Findings 02-20140358 (November 5, 2014), 20150128 Ind. Reg. 045150015 NRA (the "LOF"), denying Taxpayer's protest in part and sustaining it in part. Taxpayer requested a rehearing. The Department granted the rehearing to address the disallowance of its claimed research expense tax credits. A rehearing was held, and this Supplemental Letter of Findings results. Additional facts will be provided as needed.

I. Adjusted Gross Income Tax-Research Expense Tax Credit.

DISCUSSION

Taxpayer claimed a research expense tax credit for tax years 2010 and 2011. The Department adjusted the claimed research expense tax credit because the associated research project was not conducted in Indiana. Taxpayer had no adjusted gross income tax liability for 2010, so the available research expense tax credit carried forward to 2011. The Department applied the available research expense tax credit to Taxpayer's 2011 adjusted gross income tax liability, and the credit was exhausted.

Initially, the Department adjusted Taxpayer's claimed research expense tax credit because Taxpayer failed to demonstrate that the research expenses claimed for the research expense tax credit were for qualified research conducted in Indiana. The Department had removed the wage expenses for certain of Taxpayer's employees because these employees had performed research for four research projects that were based outside of Indiana.

Since the projects were based outside of Indiana, the Department found that the research expenses were not Indiana qualified research expenses that were "incurred for research conducted in Indiana" as prescribed in IC § 6-3.1-4-1.

Taxpayer protests the Department's adjustment to its claimed research expense tax credit was not warranted. Taxpayer maintains that these employees' wages were qualified expenses because the employees had conducted their research work on these projects—that were based outside of Indiana—from Taxpayer's Indiana research facility.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012).

Indiana provides for a research expense tax credit. IC § 6-3.1-4-1 et seq. "A taxpayer who incurs Indiana qualified research expense in a particular taxable year is entitled to a research expense tax credit for the taxable year." IC § 6-3.1-4-2(a). An "Indiana qualified research expense" is a "qualified research expense" [] (as defined in Section 41(b) of the Internal Revenue Code as in effect on January 1, 2001)" that is "incurred for research conducted in Indiana." IC § 6-3.1-4-1. (Emphasis added). I.R.C. § 41 states that a "qualified research expense" may include "any wages paid or incurred to an employee for qualified services performed by such employee," "any amount paid or incurred for supplies used in the conduct of qualified research," and, subject to specific regulations, any amount paid for the right to use computers in conducting qualified research. I.R.C. § 41(b)(2).

At the original protest hearing, Taxpayer stated that it "can provide support for the fact that the R&D effort was actually performed in [Indiana] (names of engineers and researchers with IN W-2s)[,]" but failed to do so. During the original protest, Taxpayer had only provided additional explanations—in the form of short paragraphs stating that the research was conducted in Indiana where the individuals and equipment existed to conduct the research—without providing any source documentation. During the rehearing, Taxpayer presented additional information, the "W-2 wage" information and project log schedules, to demonstrate that these employees for whom Taxpayer had claimed the wages expenses as "qualified research expenses" had conducted their "qualified research" at Taxpayer's Indiana research facility.

Accordingly, based upon the additional documentation presented, Taxpayer has met its burden to demonstrate that the employees' wages in question were paid for work performed in Indiana. Since the employees' wages were paid for research work that was performed in Indiana, Taxpayer has "incurred expenses for research conducted in Indiana" and, thus, may have additional "Indiana qualified research expenses." Thus, the Department's Audit Division will conduct a supplemental audit review of the information submitted and will make any adjustments it deems appropriate.

FINDING

Taxpayer's protest of the exclusion of the Taxpayer's wages expenses for the employees from its "Indiana qualified research expenses" because the research projects were based outside of Indiana is sustained. The Department's Audit Division will conduct a supplemental audit review of the information submitted and will make any adjustments it deems appropriate.

Posted: 04/29/2015 by Legislative Services Agency
An [html](#) version of this document.